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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re TORI P., a Person Coming Under the
Juvenile Court Law.

B240617
(Los Angeles County Super. Ct.
No. CK89138)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

TONY P.,

Defendant and Appellant.

APPEAL from the orders of the Superior Court of Los Angeles County, Elizabeth Kim, Juvenile Court Referee. Affirmed.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Emery El Habiby, Deputy County Counsel, for Plaintiff and Respondent.

Tony P. (father) appeals from the orders of April 16, 2012, made pursuant to Welfare and Institutions Code section 364,¹ which granted sole physical custody to mother, Sheila E., with visitation on weekend days to father, and terminated dependency court jurisdiction. Father contends the custody and visitation orders were an abuse of discretion and the court lacked jurisdiction to sign an order giving mother the authority to determine visitation transportation. We affirm.

STATEMENT OF FACTS AND PROCEDURE

Tori was born in 2000 to mother and father. Tori lived with mother and visited father on weekends. Tori had Attention Deficit Hyperactivity Disorder.² Mother disciplined Tori for bad behavior by hitting her with a belt, which caused injuries. In March 2011, when the abuse was reported to the police, mother accepted responsibility, stating she did not know this was abuse and would not use the belt again. Tori was detained with father, and a section 300 petition was filed. Tori wanted to remain with father until mother took classes and calmed down.

On April 12, 2011, Tori was declared a dependent of the court based on sustained allegations under section 300, subdivision (a) (risk of serious physical harm inflicted non-accidentally), in that mother inappropriately physically disciplined Tori by striking her with a belt. Tori was placed in home-of-parent father, who was ordered to participate in drug testing³ and, if appropriate, conjoint counseling. Mother was ordered to participate in parenting, individual counseling to address anger management and case issues, and, if

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² Tori received this diagnosis in 2011.

³ Father took medical marijuana. His drug tests were positive for marijuana. Prior to 1996, he was addicted to cocaine. During that period, he suffered numerous convictions for drug and theft-related offenses.

appropriate, conjoint counseling. Mother was granted monitored visits. The matter was continued to July 12, 2011, for a review hearing under section 364.

Mother completed parenting and anger management classes in May 2011 and participated in weekly counseling with Tori. Tori began to have overnight weekend visits with mother in July 2011. In August 2011, mother completed a youth mentoring program. Her “parent advocator instructor [stated] that [mother] and Tori’s relationship is strong and their bond [has] grown immensely since taking the course.” Tori wanted to move back to mother’s home.

On July 27, 2011, the home-of-parent father order was terminated, and Tori was placed in home of parents under Department supervision, with each parent to have custody on alternating weeks. A review hearing under section 364 was set for January 25, 2012.

Tori did not like going back and forth between the parents’ homes. She wanted to live with mother during the school year, visit father part of the time on weekends, and take turns living with the parents during school vacation. Father wanted to rotate custody with mother every six months. Mother wanted custody of Tori during the school year. She stated she would let father see Tori whenever he asked, and she did not want child support. Mother and Tori continued in weekly family counseling.

On February 6, 2012, the dependency court ordered the family to participate in a psychological examination by Dr. Matteo Muti to assess the current joint custody schedule and recommend whether Tori’s best interest would be served by one parent having primary physical custody.

Dr. Muti recommended mother have full custody. He described Tori as “bright, resilient and cheerful.” “Her level of curiosity is contraindicated of a child who had been physically abused.” “She was quick to share . . . the new methods of discipline while living with her mother. Her mother and she have decided to use time-out and deprive her of privileges when she gets a poor report from school. They both decide what will be the consequence. Thus, she will connect her behavior to consequences more rapidly.” “[T]he bond between [Tori] and her mother has been restored. She openly

stated she prefers to live with her mother on a full time basis.” She felt father had bribed her to live with him on a full-time basis and exploited her hurt feelings about her mother. Father was unemployed. Tori described the living conditions in father’s home as “full of drama.” They shared a one-bedroom apartment with a child from his girlfriend, and, periodically, the girlfriend. When the girlfriend spent the night, she and father slept in the bedroom, and Tori and the half-sibling slept in the living room. “[F]ather and his girlfriend have loud, angry disagreements that scare her. They accuse each other of narcotics abuse. [The girlfriend] calls . . . father a dope head and he calls [the girlfriend] a crack head. Tori found a strange pipe in the apartment, leaving her to believe that both . . . father and [the girlfriend] use narcotics.” Tori was worried about drug-use and her father’s welfare. Father had a pit bull living in a cage in the living room. Tori did not feel safe living with father due to his relationship with his girlfriend and lack of financial resources, and she was also afraid of the neighborhood.

Dr. Muti found both parents to be warm, nurturing, concerned, and sincere. Mother was highly motivated to confront her use of corporal discipline, had developed a plan of response for when Tori received poor school reports, and had learned the value of regulating her own behavior before correcting Tori’s behavior. Mother’s long-term employment at the sheriff’s department and ownership of her home reflected stability and reliability. Father had three other children from three other women. He doubted he was Tori’s biological father. He had chronic arguments with his girlfriend. He refused to recognize the environment he was providing for Tori was not in her best interests. He did not understand that how his behavior with his girlfriend had a negative impact on Tori.

Dr. Muti concluded Tori should be placed in mother’s custody and have daytime visits with father on alternating weekends, spending Saturday night at her aunt’s house so she can visit father on Sunday without having to spend the night with him.⁴

⁴ Both father and the aunt lived in Los Angeles, while mother lived in San Bernardino County.

On April 16, 2012, a section 364 hearing was held to determine what custody arrangement was in Tori's best interest and whether to terminate dependency jurisdiction with a family law order in place. The court found dependency court supervision of Tori was no longer necessary and terminated jurisdiction. Father requested 50/50 custody and, if not, overnight visits. The court gave mother sole physical custody, with Tori's primary residence to be with mother. Father was awarded unmonitored, day visits every other weekend. The court found that residing with father was not in Tori's best interest. Tori wanted her primary residence to be with mother. She felt afraid in father's home, because father and his girlfriend argued and it seemed narcotics were being abused. There was a large pit bull in the home. As Tori had a learning disability, it was in her best interest to have the consistency of living in one primary residence. The termination order was stayed pending receipt of a family law order. On April 17, 2012, the dependency court signed the custody and visitation order for filing in family court, and the stay of termination of jurisdiction was lifted.

DISCUSSION

I. Abuse of Discretion

Father contends the orders giving mother sole physical custody, granting father day visits instead of overnights, and terminating dependency jurisdiction were an abuse of discretion.⁵ We disagree with the contention.

We review a dependency court's decision to terminate jurisdiction and issue a custody and visitation order under section 362.4 for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300 (*Bridget A.*)) When a determination is "committed to the sound discretion of the juvenile court, . . . the trial court's ruling

⁵ Respondent contends the appeal is moot because the dependency court terminated jurisdiction. The appeal is not moot, because father challenges the termination order and the orders made at the termination hearing.

should not be disturbed on appeal unless an abuse of discretion is clearly established. [Citations.] As one court has stated, when a court has made a custody determination in a dependency proceeding, “a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.] And we have recently warned: ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Where substantial evidence supports the order, there is no abuse of discretion. (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839.) “It is not our function to weigh the credibility of the witnesses or resolve conflicts in the evidence. [Citation.] Rather we must indulge in all reasonable inferences to support the findings of the juvenile court and must review the record in the light most favorable to the juvenile court’s orders.” (*Ibid.*)

Section 362.4 provides in pertinent part: “When the juvenile court terminates its jurisdiction over a . . . dependent child[,] and . . . an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child. [¶] Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in [the family’s proceeding in family court] at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part thereof.”

Section 364 provides in pertinent part: “(a) Every hearing in which an order is made placing a child under the supervision of the juvenile court pursuant to Section 300 and in which the child is not removed from the physical custody of his or her parent or guardian shall be continued to a specific future date not to exceed six months after the date of the original dispositional hearing. . . . [¶] . . . [¶] (c) After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court shall terminate its

jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn.”

The award of sole physical custody to mother, with father’s visitation to not include overnights, was not an abuse of discretion. Prior to Tori’s detention, she lived with mother. She was out of mother’s care for only four months during the dependency case. The dependency court originally took jurisdiction of Tori because mother used physical discipline. There is evidence mother immediately acknowledged her responsibility, vowed to change, completed her programs within four months and benefited from them, and established an appropriate method of disciplining Tori when Tori misbehaved, which Tori enthusiastically accepted. Tori always wanted to return to mother’s custody. By the summer of 2011, the mother-child bond was restored and Tori felt she and mother were ready for her to return to mother’s custody. Tori felt insecure and fearful in father’s home, because he exposed her to aggressive, name-calling arguments with his girlfriend, accusations and indications of narcotics drug use, and a neighborhood she felt was dangerous. Father allowed the girlfriend to spend the night in his home when Tori was there. Dr. Muti reported father did not recognize that his behavior with his girlfriend harmed Tori. Father’s economic insecurity made Tori feel unsafe. Mother had a stable job and owned her home. As Tori had special needs, it could reasonably be concluded she would benefit from the consistency and stability she would enjoy in mother’s sole physical custody. On these facts, it was not beyond the bounds of reason for the dependency court to award mother sole physical custody and limit father’s visits to daytime only.

The dependency court did not abuse its discretion in finding continued supervision was not necessary. (§ 364, subd. (c).) There was evidence mother was rehabilitated and Tori’s strong bond with mother was restored. This evidence supports the conclusion that the condition that brought Tori under dependency jurisdiction no longer existed. There was evidence that both parents were nurturing, concerned about Tori’s welfare, and

cooperative concerning Tori's care. Mother stated she would facilitate visitation with father. The foregoing is substantial evidence Tori was no longer at risk of harm under section 300 and continued supervision was not necessary. Thus, the order terminating jurisdiction was not an abuse of discretion.

To the extent father argues the custody and termination orders were an abuse of discretion because there was evidence that Dr. Muti recommended mother continue in individual counseling to assist her in regulating her emotions, father is asking us to reweigh the evidence, which we do not do. (*In re Daniel C. H.*, *supra*, 220 Cal.App.3d at p. 839.)

II. Transportation Order

At the conclusion of the hearing on April 16, 2012, the dependency court directed county counsel to prepare an order for filing in family court, to be signed by the court on April 17, 2012, and directed the parties to wait. On April 17, 2012, the court received and signed the order. All counsel were present. The visitation order, on a Judicial Council form, provided that mother would determine who provided the transportation to and from visits.

Father contends the dependency court lacked jurisdiction to include in the April 17th written custody order a ruling that mother would determine who provided visitation transportation, because the court had not made that ruling at the hearing on April 16, 2012. We disagree with the contention. As the court terminated jurisdiction, it had discretion to determine visitation, including transportation for visitation. (See § 362.4; *Bridget A.*, *supra*, 148 Cal.App.4th at p. 300 [when a dependency court terminates jurisdiction, it has discretion to issue an order determining custody and visitation, and that order is reviewed for abuse of discretion].) Father does not contend the court did not have discretion to grant mother the authority to determine who provided transportation for visitation. It matters not that the visitation transportation issue was not

decided on April 16. It was decided on April 17, in the presence of all counsel, without objection.

DISPOSITION

The orders are affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.